

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE

**FILED**

December 15, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

LOUIS RAY SMITH,	)	HAWKINS CIRCUIT
	)	
Plaintiff/Appellant	)	NO. 03S01-9701-CV-00004
	)	
v.	)	HON. BEN K. WEXLER,
	)	JUDGE
ZURICH INSURANCE COMPANY and	)	
LEAR SEATING CORPORATION,	)	
	)	
Defendants/Appellees	)	

**For the Appellant:**

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**For the Appellee:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Adolpho A. Birch, Jr.  
Senior Judge John K. Byers  
Special Judge Irvin H. Kilcrease, Jr.

AFFIRMED

BYERS, Senior Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The plaintiff alleged he had sustained permanent impairment as a result of an accident on November 8, 1994, while employed by the defendant.

The trial judge dismissed the petition.

We affirm the judgment.

There is no dispute concerning the occurrence of an on-the-job accident which was a fall by the plaintiff.

The only medical evidence in the case was the deposition of Dr. John H. Bell, an orthopedic surgeon. Dr. Bell found the plaintiff had suffered contusions and a sprain of his lower spine as a result of the fall. This was superimposed upon a pre-existing lumbosacral disc disease.

Dr. Bell testified there was no anatomic evidence the disc disease was aggravated by the injury, and that the fall caused the pre-existing condition to become painful. Further, the plaintiff had told Dr. Bell he had a previous back pain episode, as well as intermittent back pain prior to the fall. Dr. Bell testified the plaintiff complained of pain but there was no anatomical change associated with the pain.

Dr. Bell was of the opinion the back strain had healed. He further testified it is not uncommon for a person with an arthritic or a degenerative condition to be free of symptoms but that these conditions may become symptomatic as a result of an injury.

Dr. Bell found the plaintiff had a 5 percent permanent medical impairment because of the condition of his back. Dr. Bell fixed restrictions upon the plaintiff. Dr. Bell testified, however, that he placed these restrictions upon the plaintiff because of the plaintiff's complaint of pain, which Dr. Bell associated with the pre-existing condition rather than the fall.

The plaintiff presented lay testimony to support his contention that he was disabled. However, in all but the most obvious cases, there must be medical evidence to show an impairment exists, and its connection to the work injury.

*Johnson v. Midwesco, Inc.*, 801 S.W.2d 804 (Tenn. 1990); *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935 (Tenn. 1987).

The evidence in the case shows the only consequence of the fall was an increase of pain associated with the pre-existing condition, without any anatomical change or impairment.

The aggravation of a pre-existing condition which causes only an increase in pain with no additional anatomical impairment or increase in the severity of the underlying condition is not compensable. *Cunningham v. Goodyear Tire & Rubber Co.*, 811 S.W.2d 888 (Tenn. 1991).

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John K. Byers, Senior Judge

CONCUR:

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Adolpho A. Birch, Jr., Justice

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Irvin H. Kilcrease, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

LOUIS RAY SMITH, ( )  
 ( )  
 Plaintiff-Appellant, ( Hawkins Circuit  
 ( No. 7301  
 ( )  
 v. ( Hon. Ben K. Wexler,  
 ( Judge  
 ( )  
 ( S. Ct. No. 03S01-9701-CV-00004  
 ( )  
 ZURICH INSURANCE COMPANY AND ( )  
 LEAR SEATING CORPORATION, ( )  
 ( )  
 Defendants-Appellees. ( AFFIRMED.

**JUDGMENT ORDER**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, for which execution may issue if necessary.

IT IS SO ORDERED this \_\_\_\_ day of December, 1997.

PER CURIAM

Birch, J. - Not participating.